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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,924	12/29/2003	Jeffrey Mark LaFortune	19457	7068

23556 7590 07/20/2006

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EXAMINER	
MATZEK, MATTHEW D	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/747,924	LAFORTUNE, JEFFREY MARK	
	Examiner	Art Unit	
	Matthew D. Matzek	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) *20-34* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/24/2006 has been entered.

Response to Amendment

2. Claims 1-34 are currently pending, but claims 20-34 have been withdrawn from prosecution. The previously applied prior art rejections have been withdrawn due to amendment.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 is rejected as the composite must have multiple components. Therefore, having the components comprise fluff fibers only, or superabsorbent particles (SAPs) only contradicts claim 1's limitation of having multiple components.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-12 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFarland et al. (US 4,604,313) in view of Badyal et al. (US 2006/0008592 and WO

03/080259). WO 03/080259 is the parent of US 2006/0008592. US 2006/0008592 has been relied upon for this Office Action.

a. McFarland et al. teach an absorbent article comprising polymeric and wood fibers (Abstract). The article comprises a first layer comprising polymeric and wood fibers, but no SAPs and at least one additional layer of the same make up as the first, except it does include SAPs. The first layer acts to aid in trapping of any super-absorbent which is not immediately entangled in the meltblown and wood fibers and prevents its passing through the forming belt. The first layer also is the preferred body side in use as it will not be slimy and will feel drier than the super-absorbent containing side (col. 2, lines 26-48). The Example details the use of fluff cellulosic fibers. The applied invention is silent as to the treatment of the components of the absorbent article to modify their charge.

b. Badyal et al. teach a method of altering the characteristics of a material by applying one of, but preferably both of the steps of cross-linking of either or both the exterior and internal surfaces of a SAP substrate and/or plasma modification/deposition of/onto the cross-linked material. The resultant product is an absorbent, hydrophobic polymer material which has improved liquid retention and super absorbent characteristics (Abstract). Badyal et al. teach the use of an electron beam to cross-link the super-absorbent material of the absorbent article [0029]. The cross-linking of the super-absorbent polymer provides electrostatic repulsion between the charges along the polymeric chains permits the absorption of liquids [0008]. Cross-linked SAPs may be used in personal hygienic articles such as diapers [0006]. The plasma modification/deposition may be applied on top of the absorbent article and/or below the

substrate's surface at selected localized areas [0026]. In one embodiment, the plasma modification results in the surface of the article being oxidized [0014]. Oxidizing the surface results in a charged surface that will create repulsive forces between the fibers on the surface.

c. Since McFarland et al. and Badyal et al. are from the same field of endeavor, (i.e. absorbent articles), the purpose disclosed by Badyal et al. would have been recognized in the pertinent art of McFarland et al.

d. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have crosslinked the SAPs of McFarland with an electron beam and modifying the absorbent substrate of via the deposition/modification process of Badyal et al. The skilled artisan would have been motivated by the desire to create an absorbent, hydrophobic polymer material has improved liquid retention and super absorbent characteristics (Abstract; Badyal et al.).

e. Claim 4 is rejected as the depth of the plasma treatment may be extended below the surface of the substrate [0026]. Claim 5 is rejected as the treatment may be restricted to the external surface of the article, which contains no SAPs. Claims 7-10 are rejected as they properties are necessarily present following the treatments taught by Badyal et al.

5. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFarland et al. (US 4,604,313) in view of Badyal et al. (US 2006/0008592 and WO 03/080259) as applied to claim 1 above, and further in view of Kellenberger (US 5,147,343). McFarland et al. and Badyal et al. are silent as to the specific size of the superabsorbent particles and their size distribution.

a. Kellenberger teaches an absorbent composite comprising a porous matrix of fibers and superabsorbent (SAP) material (Abstract). Several examples are taught by Kellenberger including Example VIII with 57% of the SAP particles between 300 and 600 micrometers.

b. Since McFarland et al. and Kellenberger are from the same field of endeavor, (i.e. absorbent composites comprising a porous matrix of fibers and superabsorbent (SAP) material) the purpose disclosed by Kellenberger would have been recognized in the pertinent art of McFarland et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of McFarland et al. with over 50% of the SAP particles with a size between 300-600 microns with the motivation of creating an article with sufficient permeability and surface area for absorption.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 3, 4, 5, 7-10 and 15-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of copending

Application No. 10/734,004. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to absorbent articles comprising fibers subjected to corona discharge.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm MDM

NORCA TORRES
PRIMARY EXAMINER